

10/775,619

ATTY DOCKET D5490

**REMARKS****REQUEST FOR REFUND**

First, The Notice of Withdrawal From Issue Under 37 CFR 1.313 is incorrect when it says the issue fee had not been paid. Both the issue fee and publication fee were charged to Deposit Account 14-0603 on "03/14/2006" as shown in the attachment.

The Notice of Withdrawal From Issue Under 37 CFR 1.313 acknowledges that if the issue fee has in fact been paid, refund may be requested. REFUND OF BOTH ISSUE FEE AND PUBLICATION FEE BY CREDIT TO DEPOSIT ACCOUNT 14-0603 IS HEREBY RESPECTFULLY REQUESTED.

**RESPONSE TO DETAILED ACTION**

Para. 1 is obviously incorrect if it refers to Applicant. No claims pending at time of 13 March 2006 fee payment have been withdrawn by Applicant. Para. 1 is also at conflict with the Office Action Summary and Paras. 6 and 7 indicating certain allowable and allowed claims.

Paras. 2 and 3 reject Claims 25, 27, and 30 under 35 USC 102(e) as anticipated by Joos et al.

No comment on the content of that reference, except for notice of its 27 January 2004 filing date in the United States, is seen necessary in view of the concurrent

10/775,619

ATTY DOCKET DS490

submission of an accompanying 4-Page JOINT DECLARATION OF KEVIN P.BISHOP AND WALTER P.GORCZOWSKI (37 CFR 1.131) that incorporates Exhibits A and B, as provided by 37 CFR 1.131 for the purpose of removing Joos et al. as a reference that is available with respect to this application. MPEP 715.05(B) provides for less than all named inventors to make a Declaration, as is being done in this instance.

Collectively, the Joint Declaration and two Exhibits comprise a suitable and sufficient showing, consistent with the description given in MPEP 715.07.

Exhibit B contains three schematic diagrams: Traditional Logical Flow for Engine Speed Governing in Diesel engines; Presented Improved Logical Flow for Engine Speed Governing in Diesel engines; and Detail of Fuel Rate Conversion Logic. Comparison of those three diagrams with Figures 1, 2, and 3 of this patent application discloses that they are identical. Figure 2 and 3 disclose the invention of Claims 25, 27, and 30.

Exhibit A describes the invention of Claims 25, 27, and 30. For example, please refer to the first sentence at the top of Exhibit A, Page 2 of 3, and to the first sentence of the next to last line of that same page.

The Joint Declaration avers that the invention of Claims 25, 27, and 30 was made by inventors Bishop and Gorczowski in the United States before 27 January 2004 and supports the averment by authenticating and incorporating Exhibits A and B.

Accordingly, the submission of the Joint Declaration and Exhibits is believed to make withdrawal of this rejection proper, and therefore withdrawal is respectfully requested.

10/775,619

ATTY DOCKET D5490

Paras. 4 and 5 reject Claims 25, 27, and 30 as unpatentable over Kramer ('370) in view of Gladden ('473) for the same reasons as those given in an Action dated 11/02/2005. The Request For Reconsideration filed on or about 31 January 2006 in response to the 11/02/2005 Action resulted in allowance of the application, including Claims 25, 27, and 30.

The Notice of Withdrawal From Issue Under 37 CFR 1.313 states: "The application is being withdrawn from issue to permit reopening of prosecution, due to newly discovered prior art." Neither Kramer ('370) nor Gladden ('473) is newly discovered, and in view of the prior allowance of Claims 25, 27, and 30 over Kramer ('370) in view of Gladden ('473), we can only assume that this rejection was mistakenly included here. In any event, Applicant reaffirms the argument made in the Request For Reconsideration filed on or about 31 January 2006.

#### Conclusion

It is believed that a new Notice of Allowance can be issued in view of this response.

Please continue to direct correspondence to the attorney of record. However, any questions regarding the content of this paper may be directed to the undersigned.

#### Contingent Deposit Account Authorization

Although it is believed that no additional claim fee is due in connection with the filing of this paper, any lawful fee determined by the Commissioner to be due with

10/775,619

ATTY DOCKET D5490

this filing may be charged to Deposit Account No. 14-0603,  
and as requested above, please refund the previously paid  
issue and publication fees to this Deposit Account.

Respectfully submitted,



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